



## **Congressional Progressive Caucus Ad Hoc Hearing**

### **Turning the Tide: Preventing One Million More Foreclosures**

TESTIMONY OF ATTORNEY GENERAL ERIC SCHNEIDERMAN

FIRST, I'D LIKE TO THANK THE CONGRESSIONAL PROGRESSIVE CAUCUS FOR HOLDING TODAY'S AD-HOC HEARING, AND FOR INVITING ME TO PARTICIPATE. THE MEMBERS OF YOUR CAUCUS HAVE BEEN OUTSPOKEN IN YOUR EFFORTS TO ENSURE THAT THOSE RESPONSIBLE FOR THE CONDUCT THAT BROUGHT DOWN THE US ECONOMY ARE HELD ACCOUNTABLE, AND I AM HAPPY TO BE HERE TODAY AS AN ALLY IN THAT EFFORT.

AS YOU ARE AWARE, I HAVE SPENT A TREMENDOUS AMOUNT OF TIME OVER THE LAST YEAR INVESTIGATING THE BUBBLE AND THE CRASH IN THE MORTGAGE-BACKED SECURITIES MARKET.

IN FEBRUARY, NEW YORK JOINED WITH ATTORNEYS GENERAL FROM 48 OTHER STATES, AS WELL AS FEDERAL AUTHORITIES, IN REACHING A SETTLEMENT WITH THE FIVE LARGEST MORTGAGE SERVICING BANKS THAT REQUIRES THEM TO IMPLEMENT COMPREHENSIVE NEW MORTGAGE LOAN SERVICING STANDARDS AND COMMIT \$25 BILLION TO RESOLVE VIOLATIONS OF STATE AND FEDERAL LAW RELATED TO SERVICING AND FORECLOSURE.

THE SETTLEMENT WITH JP MORGAN CHASE, BANK OF AMERICA, CITIBANK, WELLS FARGO AND ALLY BANK, WAS A VICTORY FOR THE PEOPLE OF THE STATE OF NEW YORK AND THE COUNTRY. THE SETTLEMENT IS NOT A PANACEA FOR THE FORECLOSURE CRISIS, AND OF COURSE THE \$25 BILLION COMMITTED BY THE SERVICERS IS MEAGER IN COMPARISON TO THE APPROXIMATELY \$700 BILLION IN NEGATIVE EQUITY IN THIS COUNTRY. BUT IT IS GOING TO HELP HOMEOWNERS AND CONSUMERS IN VERY SIGNIFICANT AND DIRECT WAYS OVER THE NEXT THREE YEARS.

THE SETTLEMENT WE REACHED IS GOING TO PROVIDE SIGNIFICANT RESOURCES TO THE HARDEST HIT COMMUNITIES IN NEW YORK STATE AND ACROSS THE COUNTRY, IN THE FORM OF MORTGAGE PRINCIPAL REDUCTIONS, IN THE FORM OF REFINANCING, AND MOST IMMEDIATELY, IN THE FORM OF LEGAL SERVICES FOR HOMEOWNERS WHO ARE AT RISK OF FORECLOSURE.

FROM THE BEGINNING, I MADE IT A TOP PRIORITY TO GET IMMEDIATE FUNDING FOR LEGAL SERVICES FOR HOMEOWNERS AS PART OF ANY RESOLUTION OF THE FORECLOSURE CRISIS I TOOK OFFICE AS ATTORNEY GENERAL IN THE MIDST OF A MASSIVE WAVE OF FORECLOSURES AND I REALIZED EARLY ON THAT ONE OF THE BIGGEST PROBLEMS WAS THAT MANY HOMEOWNERS FACING FORECLOSURE WERE NOT REPRESENTED BY LAWYERS.

AS A RESULT, TOO MANY HOMEOWNERS HAVE HAD TO "GO IT ALONE" WHEN FACING A FORECLOSURE ACTION. IN FACT, IT APPEARS THAT CLOSE TO 50 PERCENT OF ALL NEW YORKERS FACING FORECLOSURE LACK LEGAL REPRESENTATION. THINGS LIKE ROBO-SIGNING, AND SEWER SERVICE ONLY HAPPEN BECAUSE LENDERS, SERVICERS, AND DEBT COLLECTORS ARE ABLE TO ASSUME THAT THE OVERWHELMING MAJORITY OF HOMEOWNERS WON'T HAVE ATTORNEYS TO FIGHT BACK.

OUR LEGAL SYSTEM ASPIRES TO THE GOAL OF EQUAL JUSTICE FOR ALL. BUT EQUAL JUSTICE UNDER LAW IS ONLY MEANINGFUL WHEN THERE IS EQUAL ACCESS TO THE COURTS. / AND ACCESS TO THE COURTS IS ONLY MEANINGFUL WHEN PEOPLE ARE REPRESENTED BY LAWYERS.

IN THE FACE OF THIS CRISIS, NEW YORK STATE CAME WITHIN JUST A FEW DAYS OF FORCING MANY OF OUR LEGAL SERVICES AGENCIES TO CLOSE THEIR DOORS. MILLIONS OF DOLLARS IN FUNDING FOR THE STATE'S FORECLOSURE PREVENTION SERVICES PROGRAM WAS SET TO EXPIRE ON APRIL 1.

USING NEW YORK'S SHARE OF THE APPROXIMATELY \$2.5 BILLION IN HARD CASH THAT THE SETTLEMENT PROVIDES TO ATTORNEYS GENERAL TO USE TO FUND HOUSING COUNSELING AND LEGAL ASSISTANCE PROGRAMS, MY OFFICE WAS ABLE TO PRESERVE THESE PROGRAMS, AND WE HAVE MADE A COMMITMENT TO DO SO FOR THE NEXT THREE YEARS.

ALTHOUGH I WAS PLEASED ABOUT THE LEGAL SERVICES FUNDING THAT THE SETTLEMENT PROVIDED, THE MOST IMPORTANT PART OF THE RECENT MULTI-STATE SETTLEMENT IS WHAT IT DOES NOT INCLUDE: IT DOES NOT LET ANYONE OFF THE HOOK FOR THE MISCONDUCT THAT TOOK DOWN THE AMERICAN ECONOMY.

I CAME IN TO OFFICE IN 2011, IN THE AFTERMATH OF THE CRASH, AND ALL 50 STATE ATTORNEYS GENERAL HAD GOTTEN TOGETHER TO INVESTIGATE ABUSES IN THE SERVICING OF MORTGAGES AND IN THE FORECLOSURE PROCESS, WHICH WAS IMPORTANT, BUT MY CONCERN FROM THE BEGINNING WAS THAT WE ALSO GO BACK AND LOOK AT MISCONDUCT THAT MAY HAVE OCCURRED BEFORE THE CRASH.

THERE HAVE CERTAINLY BEEN EGREGIOUS ABUSES OF HOMEOWNERS IN MORTGAGE SERVICING AND IN THE FORECLOSURE PROCESS THAT NEED TO BE CORRECTED; BUT IT WAS THE BUBBLE AND THE CRASH THAT BROUGHT DOWN THE ECONOMY.

BUT WHEN I STARTED TO ENGAGE WITH MY FELLOW AG'S WHO WERE NEGOTIATING WITH THE BANKS, IT BECAME CLEAR TO ME THAT WHAT THE BANKS WANTED, IN EXCHANGE FOR A RELATIVELY NARROW SETTLEMENT TO IMPROVE SERVICING AND FORECLOSURE STANDARDS, WAS A BROAD RELEASE FOR VIRTUALLY ALL MISCONDUCT CONNECTED TO THE MORTGAGE MARKET, INCLUDING THE CONDUCT THAT BLEW UP THE ECONOMY.

IN FACT, THE BANKS WERE ASKING TO BE RELEASED FROM LIABILITY FOR CLAIMS THAT HADN'T EVEN BEEN FULLY INVESTIGATED YET, OR WHERE INVESTIGATIONS WERE UNDERWAY, BUT NOT YET COMPLETE.

BUT THAT JUST WASN'T SOMETHING I WAS GOING TO AGREE TO. THE FIRST RULE OF RESPONSIBLE PROSECUTION IS: YOU DON'T RELEASE CLAIMS THAT HAVEN'T BEEN INVESTIGATED. SO I KEPT TALKING TO MY COLLEAGUES ABOUT MY POSITION AND BROUGHT SOME OF THEM OVER TO MY SIDE.

IN THE FINAL SERVICING SETTLEMENT, WE GAVE UP VERY LITTLE IN THE WAY OF LEGAL IMMUNITY.

THE SETTLEMENT ALSO ENABLED US TO GO FORWARD WITH THE SEPARATE, JOINT FEDERAL-STATE INVESTIGATION ANNOUNCED BY PRESIDENT OBAMA IN THE STATE OF THE UNION ADDRESS.

THIS JOINT INVESTIGATION, WHICH I CO-CHAIR, BRINGS TOGETHER THE DEPARTMENT OF JUSTICE, THE S.E.C., THE I.R.S., THE NEWLY CREATED CONSUMER FINANCIAL PROTECTION BUREAU AND OTHER FEDERAL AGENCIES ALONG WITH STATE ATTORNEYS GENERAL TO INVESTIGATE THOSE WHOSE MISCONDUCT LED TO THE FINANCIAL CRISIS.

AND THIS WORKING GROUP IS REALLY BRINGING A LEVEL OF COORDINATION AND RESOURCES, AS WELL AS THE VERY BROAD JURISDICTION THAT WE NEED TO GET AT EVERY ASPECT OF THE UNLAWFUL BEHAVIOR THAT MAY HAVE TAKEN PLACE IN THE RUN UP TO THE CRASH. WE ARE BUILDING ON EXISTING STATE AND FEDERAL INVESTIGATIONS, WHILE ALSO LAUNCHING NEW ONES, AND WE WILL CONTINUE TO PURSUE ACCOUNTABILITY, AS WELL AS MORE SIGNIFICANT RELIEF FOR HOMEOWNERS AND INVESTORS WHO WERE HARMED.

IN THE AFTERMATH OF THE CRASH, A LOT OF AMERICANS FELT THAT THEY HAD BEEN SOLD THE NOTION THAT WE SHOULD SWITCH FROM BEING A NATION OF SAVERS AND BECOME A NATION OF INVESTORS, ONLY TO FIND OUT THAT THEY WERE ACTUALLY IN A RIGGED CASINO.

AND NOT ONLY DID PEOPLE FEEL LIKE THEY HAD BEEN RIPPED OFF, BUT IT LOOKED LIKE THE NO ONE WAS GOING TO BE HELD ACCOUNTABLE.

SO WHEN I LAUNCHED AN INVESTIGATION IN TO THE MORTGAGE MESS SHORTLY AFTER I TOOK OFFICE, ONE OF MY FIRST GOALS WAS TO RESTORE PUBLIC CONFIDENCE THAT THERE WOULD BE ACCOUNTABILITY, THAT WE WOULD ENFORCE ONE SET OF RULES FOR EVERYONE, AND THAT ANYONE WHOSE MISCONDUCT CONTRIBUTED TO THE CRASH WOULD FACE JUSTICE.

BUT ANOTHER IMPORTANT GOAL WAS SIMPLY TO GET EVERYTHING OUT IN THE OPEN TO MAKE SURE THAT THE OTHER SIDE COULDN'T REWRITE HISTORY.

ALMOST IMMEDIATELY AFTER THE CRASH THERE WERE PEOPLE ON FOX NEWS SAYING THAT IT HAPPENED BECAUSE OF TOO MUCH REGULATION, RATHER THAN NOT ENOUGH. OR BECAUSE THE GOVERNMENT WAS TRYING TO HELP POOR PEOPLE GET HOMES THEY COULDN'T AFFORD.

IN THE LAST COUPLE OF YEARS, STATE AND LOCAL GOVERNMENTS HAVE HAD FISCAL CRISES THAT WERE THE DIRECT RESULT OF THE RECESSION. THE RECESSION CAUSED TAX REVENUES TO COLLAPSE AND UNEMPLOYMENT AND MEDICAID COSTS TO RISE. BUT CONSERVATIVES ARE OUT THERE SAYING THAT OUR DEFICITS ARE THE RESULT OF SPENDING TOO MUCH ON TEACHERS OR POLICE OR FIREFIGHTERS.

THAT'S NONSENSE. THE ECONOMY DIDN'T CRASH BECAUSE WE SPENT TOO MUCH ON TEACHERS. I CAN'T COMMENT ON THE SPECIFICS OF AN ONGOING INVESTIGATION BUT I PROMISE YOU, THERE IS NO

EVIDENCE THAT TEACHERS, FIREFIGHTERS, OR SANITATION WORKERS OR ANY OTHER PUBLIC EMPLOYEE WERE THE CAUSE OF THE COLLAPSE OF THE AMERICAN ECONOMY.

LET ME TELL YOU WHAT I HAVE LEARNED ABOUT WHAT LED TO THE CRASH OF 2008. RECKLESS DEREGULATION SET THE STAGE FOR IRRESPONSIBLE ---AND IN SOME CASES, ILLEGAL---MISCONDUCT IN THE U.S. MORTGAGE MARKET. AND BY A RELATIVELY SMALL GROUP ON WALL STREET.

THE DEREGULATORY HISTORY THAT LED TO THE CRASH IS UNCONTESTED. IT'S WELL KNOWN THAT THE GLASS-STEAGALL ACT—SEPARATING COMMERCIAL BANKS FROM INVESTMENT BANKS WAS REPEALED IN 1999.

THE REFUSAL TO REGULATE DERIVATIVES WAS NOT EXONERATED IN LEVITICUS, BUT IN THE COMMODITY FUTURES MODERNIZATION ACT OF 2000, WHICH ENSURED THAT DERIVATIVES WOULD NOT BE REGULATED.

IN NOVEMBER 2001 FEDERAL BANK REGULATORS CHANGED THE "RISK RATING SYSTEM" FOR MORTGAGE BACKED SECURITIES. THE ARE POOLS OF MORTGAGES THAT ALLOW INVESTORS TO BUY A SHARE OF THE FUTURE INCOME STREAM FROM THE MORTGAGES.

SO BANKS HAD TO SET ASIDE LESS CAPITAL TO PROTECT INVESTORS IN CASE THERE WERE A LARGE NUMBER OF DEFAULTS ON THE MORTGAGES IN THEIR SECURITIES.

AND, AT THE SAME TIME, THE STAGE WAS SET FOR A WAVE OF DEFAULTS BY A DECLINE IN LENDING STANDARDS AND A FAILURE TO REIN IN PREDATORY LOANS. STATES PLEADED WITH CONGRESS TO TIGHTEN RESTRAINTS ON SUBPRIME LENDERS. WHEN CONGRESS REFUSED, MANY STATES PASSED THEIR OWN ANTI-PREDATORY LENDING LAWS, ONLY TO HAVE THEM WIPED AWAY BY THE BUSH ADMINISTRATION.

IN FEBRUARY 2004 / THE OFFICE OF THE COMPTROLLER OF THE CURRENCY OFFICIALLY EXEMPTED NATIONAL BANKS FROM STATE LAWS REGULATING MORTGAGE CREDIT, INCLUDING STATE ANTI-PREDATORY LENDING LAWS.

LOOK: MORTGAGE-BACKED SECURITIES WERE GOOD INVESTMENTS FOR DECADES... THIRTY YEAR FIXED RATE MORTGAGES.

THE PERCENTAGE OF INTEREST-ONLY AND NEGATIVE AMORTIZATION LOANS (WHERE THE AMOUNT YOU OWE ACTUALLY INCREASES WITH EACH PAYMENT) ROSE FROM ABOUT 6 PERCENT OF THE MARKET IN 2003 TO ABOUT 30 PERCENT OF THE MARKET IN 2005. THE MOVE TO "NO DOCUMENTATION" LOANS, AND WHAT CAME TO BE KNOWN AS "LIAR LOANS" IN WHICH MISREPRESENTATIONS WERE DELIBERATELY MADE TO PERMIT LENDERS TO PROVIDE MORTGAGES TO PEOPLE WHO CLEARLY COULDN'T PAY THEM BACK, ALSO INCREASED.

THE EXPANDED USE OF COLLATERALIZED DEBT OBLIGATIONS ALSO HELPED EXTEND THE BOOM INTO A BUBBLE.

IN SHORT, SHODDY LENDING PRACTICES, AND OPAQUE FINANCIAL ENGINEERING TO RESELL SHAKY MORTGAGE DEBT TO INVESTORS, DROVE HOUSING PRICES UPWARD DURING THE BUBBLE YEARS, FAR PAST THE POINT WHEN THE MARKET SHOULD HAVE STARTED TO COOL.

WHEN THE BUBBLE FINALLY BURST, MILLIONS OF JOBS DISAPPEARED, AMERICAN PENSION FUNDS LOST \$1.3 TRILLION IN RETIREMENT ASSETS, / OVER \$7 TRILLION IN HOME EQUITY EVAPORATED, AND THE U.S. ECONOMY FELL IN TO THE LONGEST AND DEEPEST RECESSION IN 70 YEARS.

SO WE KNOW A LOT ABOUT WHAT CAUSED THE BUBBLE AND THE CRASH. AND WE KNOW THAT IN SPITE OF CONSERVATIVE RHETORIC, THAT IT WASN'T COPS, FIREFIGHTERS, OR TEACHERS.

AND THIS IS WHERE I NEED YOU. YES, I NEED YOU TO THROW YOURSELVES BEHIND EVERY ASPECT OF THE RESIDENTIAL MORTGAGE BACKED SECURITIES WORKING GROUP. YES, I NEED YOU TO ENCOURAGE THE FEDERAL GOVERNMENT TO LEND AS MANY RESOURCES AS POSSIBLE TO THE GROUP, AND TO ACTIVELY ENCOURAGE ALL PARTIES TO MOVE FORWARD WITH THEIR INVESTIGATIONS.

BUT MOST OF ALL, IT IS SO INCREDIBLY IMPORTANT FOR YOU TO GET THE WORD OUT THERE ABOUT WHY THE BUBBLE AND THE CRASH HAPPENED, SO THAT CONSERVATIVES CAN NOT CONTINUE TO REWRITE HISTORY. I URGE TO EXPEND YOUR TIME, YOUR ENERGY, AND YOUR POLITICAL CAPITAL REBUTTING THESE ARGUMENTS. BECAUSE IF WE CONTINUE TO LET THEM REWRITE HISTORY, WE ARE ONLY DOOMED TO MAKE THE SAME MISTAKES AGAIN. AND AMERICANS DESERVE BETTER.

AGAIN, THANK YOU FOR HAVING ME HERE TODAY, AND I LOOK FORWARD TO YOUR QUESTIONS.